

STATEMENT OF FACTS

A. Procedural History in the State Courts

On May 16, 1985, the petitioner was convicted by a jury in the Circuit Court for the County of Jackson, Michigan, of the offense of criminal sexual conduct in the first degree, Mich. Comp. Laws § 750.520b; on June 27, 1985, he was sentenced to life in prison. (R. 1, Appendix, State Court Docket Entries, App. 88-95, Apx. p. ____)

From 1985 through 2000 the petitioner was continually challenging his conviction and sentence on direct appeal or by collateral attack in the state courts. His case produced published and unpublished opinions in the trial court, court of appeals, and state supreme court, including remands to the court of appeals by the state supreme court and a remand to the trial court by both the court of appeals and the supreme court. (See, R. 1 Appendix, App. 96-153, Apx. p. ____; *People v. Ewing*, 429 Mich 866-867 (1987); *People v. Ewing*, 435 Mich. 443, 458 N.W.2d 880 (1990); R. 1, Appendix, State Court Docket Entries, App. 88-95, Apx. p. ____; *People v. Ewing*, 444 Mich. 907 (1994))

The Michigan Supreme Court denied Ewing's final application for leave to appeal in his appeal or right, after remand, on June 29, 1998, in *People v. Ewing*, 458 Mich. 853 (1998). Petitioner's last collateral attack in state court was filed on October 14, 1998, and finally denied by the state supreme court on June 26, 2000.

(R. 1, Appendix, State Court Docket Entries, App. 88-95, Apx. p. ____, Opinions and Orders, App. 149-153, Apx. p. ____; *People v. Ewing*, 462 Mich. 897 (2000))

B. The Charges Against Ewing in State Court

On June 20, 1983, near dark, Julie Culhane was jogging in a rural area of Jackson County, Michigan, when she was attacked and raped by a stranger with dark hair and a mustache who was wearing mirrored sunglasses. (R. 13, Prelim. Exam. 8/27/84 Tr. 13, 15-16, 34-35, Apx. ____; R. 21, Trial Tr. 121-122, 137, 144-145, 147, Apx. p. ____) Culhane testified that she heard someone approach from behind, turned and saw a man, walked backwards, said, "you scared me," he laughed, and then she turned around to resume jogging.¹ (R. 13, Prelim. Exam. 8/27/84 Tr. 17, 38-39, Apx. ____; R. 18, Evid. Hg., 2/11/85 Tr. 134, Apx. ____; R. 21, Trial Tr. 146-147, 187-188, Apx. p. ____) The man had no unusual features that she could recall. (R. 13, Prelim. Exam. 8/27/84 Tr. 41, Apx. ____; R. 18, Evid. Hg. 2/11/85 Tr. 149, Apx. p. ____; R. 21, Trial Tr. 196, Apx. p. ____)

The next thing she knew, Culhane was grabbed from behind, dragged into the woods, and thrown on her stomach. (R. 13, Prelim. Exam. 8/27/84 Tr. 18, 20, 39, Apx. ____; R. 18, Evid. Hg. 2/11/85 Tr. 137-138, Apx. p. ____; R. 21, Trial Tr.

¹ Culhane claimed this "brief conversation" took two to three minutes, and that she was concentrating on the man's face and trying to remember his clothes, but admitted that she had no reason to study the man when she briefly turned around while jogging. (R. 13, Prelim. Exam. Tr. 38-39, Apx. p. ____; R. 21, Trial Tr.